

EXHIBIT 5

In the Matter Of:

Civil Investigation Demand - No. 30762

[REDACTED]

February 28, 2022



1 UNITED STATES DEPARTMENT OF JUSTICE
2 ANTITRUST DIVISION, WASHINGTON, D.C.

3 PURSUANT TO CIVIL INVESTIGATION DEMAND NO. 30762

4
5 "HIGHLY CONFIDENTIAL"

6
7 30(b)(6) DEPOSITION OF

8 [REDACTED]
9 ON BEHALF OF ALPHABET, INC.

10 FEBRUARY 28, 2022

11
12 ORAL VIDEOTAPED DEPOSITION OF [REDACTED],

13 produced as a witness at the instance of the United
14 States Department of Justice and duly sworn, was taken
15 in the above-styled and numbered cause on the 28th day
16 of February, 2022, from 8:36 a.m. to 5:59 p.m. PST,
17 before Melinda Barre, Certified Shorthand Reporter in
18 and for the State of Texas, reported by computerized
19 stenotype machine, all parties appearing remotely via
20 web videoconference, pursuant to the rules of procedure
21 and the provisions stated on the record or attached
22 hereto.

23

24

25

1 APPEARANCES
2 (ALL APPEARED VIA ZOOM VIDEO CONFERENCE.)

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19 ALSO PRESENT: Ryan LaFond, Videographer;
20 [REDACTED]; Seumas Macneil;
21 [REDACTED]; Daniel Bitton
22
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24
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1 been done that was contributed to Project Sunday.

2 Q. (By Mr. Nakamura) Okay. Thank you.

3 And what data sources did Alphabet
4 employees rely upon for any financial analyses prepared
5 for Project Sunday?

6 MS. ELMER: Object as invading the work
7 product doctrine and the attorney/client privilege.

8 A. Okay. So I can't answer for those reasons.

9 MR. NAKAMURA: I'm sorry. To be clear,
10 are you instructing [REDACTED] not to answer?

11 MS. ELMER: Yes.

12 Q. (By Mr. Nakamura) And will you follow your
13 counsel's instruction?

14 A. Yes.

15 Q. So if you turn to Exhibit 7, page 4 at the
16 bottom -- let me know if you need us to refresh that or
17 if you have it up.

18 A. Is this the 225 -- oh, no, wait. That's
19 No. 20.

20 Q. That's my internal tab number. That is
21 Exhibit 7. So it is the February 25th letter.

22 A. Okay.

23 Q. Let me know when you have that up.

24 A. Page 4, yes. I have that up.

25 Q. So I just want to make sure that in the last

1 contributions by [REDACTED] and [REDACTED]

2 Q. I'm sorry, two clarifications. Do you mean

3 [REDACTED]?

4 A. Yes.

5 Q. And what was the last name that you mentioned?

6 A. [REDACTED].

7 Q. That's [REDACTED]

[REDACTED]. Is that correct?

9 A. That's correct.

10 Q. Thank you.

11 Did any Alphabet employee create a
12 financial forecast as part of Project Monday?

13 A. I think that's privileged.

14 Q. I'll ask again. If your counsel wants to
15 object, she can.

16 Did any Alphabet employee create a
17 financial forecast as part of Project Monday?

18 A. It's still privileged. I think I answered it.

19 You're asking me what --

20 MS. ELMER: Yeah. Brent, our position

21 here is that you guys are not entitled to know the

22 substantive details of these work product and

23 attorney/client privileged projects. We're here to

24 provide, you know, a verbal privilege log, and that's

25 what we're doing.

1 MR. NAKAMURA: Okay. So I'll ask the
2 question again; if you want to instruct him not to
3 answer, let's do that and we'll move forward.

4 Q. (By Mr. Nakamura) Did any Alphabet employee
5 create a financial forecast as part of Project Monday?

6 A. How many times are you going to ask me?

7 Q. You need to answer my question unless your
8 counsel specifically instructs you not to answer based
9 on this; then we can just move on.

10 A. For the third time, that's privileged. I don't
11 understand the disagreement here.

12 MS. ELMER: Yeah. Brent, if you want me
13 to do a song and dance, okay. I instruct him not to
14 answer to the extent that it seeks information protected
15 by the work product doctrine and the attorney/client
16 privilege.

17 Q. (By Mr. Nakamura) Okay. And, [REDACTED], do
18 you have any information to provide me subject to your
19 counsel's instruction regarding privilege?

20 MS. ELMER: And work product.

21 A. Again --

22 Q. (By Mr. Nakamura) No. My question,
23 [REDACTED], is do you have any information to provide
24 me subject to your counsel's instruction regarding any
25 privilege?

1 MS. ELMER: Or work product.

2 A. Do I have anything to provide? No, I don't.

3 Q. (By Mr. Nakamura) Do you have information that
4 you know but are refusing to provide on the basis of
5 privilege?

6 MS. ELMER: That's ridiculous, Brent. I
7 really instruct you to stop harassing the witness here.
8 That's enough. He's answered your question. Let's move
9 on to the other topics in the CID.

10 MR. NAKAMURA: Counsel, I need a
11 refusal --

12 MS. ELMER: No. You don't need. You've
13 already gotten year answer, Brent.

14 MR. NAKAMURA: So, Ms. Elmer, I think we
15 both know that as a legal requirement I need to ask the
16 question and he needs to refuse if he's going to refuse
17 on the basis of a valid privilege, and that's fine.

18 We can move forward professionally and
19 quickly through this, but procedure needs to be
20 followed. And to the extent you would like to refuse to
21 follow that procedure, that is your choice.

22 But we are where we are today and I'm
23 going to keep asking. To the extent he refuses to
24 answer for some other reason or is not responsive to my
25 questions, we have other remedies, and that's fine.

1 Q. (By Mr. Nakamura) So my question is do you
2 have information that you know but are refusing to
3 provide on the basis of privilege?

4 A. I can't answer that for two reasons: one, due
5 to privilege and, two, because I think this is
6 obnoxious.

7 Q. My question is simply, [REDACTED], whether
8 you have information that you're withholding on the
9 basis of privilege, which is fine. I just need to know
10 that that information exists.

11 A. I can't answer whether information exists or
12 not because that would violate privilege.

13 MS. ELMER: What information -- what do
14 you mean by "information," Brent? Maybe if you can ask
15 a better question, we can get somewhere. Why don't you
16 rephrase your question.

17 Q. (By Mr. Nakamura) [REDACTED], my question is
18 did any Alphabet employee provide -- I'm sorry.

19 Did any Alphabet employee create a
20 financial forecast as a part of Project Monday?

21 MS. ELMER: And so [REDACTED] has
22 already declined to answer on the basis of the work
23 product doctrine. What more do you need?

24 Q. (By Mr. Nakamura) Is that correct,
25 [REDACTED]?

1 A. Yes.

2 Q. What data sources did Alphabet employees rely
3 upon for any divestiture analyses prepared for Project
4 Monday?

5 MS. ELMER: Same instruction and same
6 objection.

7 Q. (By Mr. Nakamura) And, [REDACTED], will you
8 follow that instruction?

9 A. Yes.

10 Q. What data sources did Alphabet employees rely
11 upon for any pricing analyses prepared for Project
12 Monday?

13 MS. ELMER: Same instruction and same
14 objection.

15 Q. (By Mr. Nakamura) [REDACTED], will you
16 follow that instruction?

17 A. Yes.

18 Q. Are there any successor projects to Project
19 Monday?

20 MS. ELMER: Object to your question as
21 outside the scope of the CID and as invading the work
22 product doctrine and the attorney/client privilege.

23 I instruct the witness not to answer the
24 question.

25 Q. (By Mr. Nakamura) Will you follow that

1 instruction?

2 A. Yes.

3 Q. All right. I will now ask you about Project
4 SingleClick, which is part of specifications 1d and
5 specification 2. So if you'd turn to Exhibit 7, page 2.
6 That's the file name that begins with 20 previously in
7 front of you. Please, [REDACTED], let me know when
8 you are there.

9 A. I am there.

10 Q. Who chose the name "Project SingleClick" for
11 this project?

12 A. I believe it was [REDACTED]

13 Q. And what is the subject matter of Project
14 SingleClick?

15 MS. ELMER: I instruct the witness not to
16 answer to the extent that answering would invade the
17 privilege or work product doctrine, but you may answer
18 if you can do so without invading the privilege, [REDACTED]

19 A. Sure. It was an analysis of potential remedies
20 to some anticipated regulatory actions.

21 Q. (By Mr. Nakamura) And was the project
22 undertaken in anticipation of litigation concerning
23 Google's AdTech business?

24 A. Yes.

25 Q. And what was the goal of Project SingleClick?

1 question is getting at the substance of a work product
2 project. So on that basis I'll instruct the witness not
3 to answer.

4 Q. (By Mr. Nakamura) Will you follow Ms. Elmer's
5 instruction?

6 A. Yes.

7 Q. Did Alphabet project, model or otherwise
8 consider any cost savings as a part of Project
9 SingleClick?

10 MS. ELMER: Same instruction.

11 Q. (By Mr. Nakamura) Will you follow Ms. Elmer's
12 instruction?

13 A. Yes.

14 Q. Did Project SingleClick incorporate any other
15 financial analyses created by Alphabet employees prior
16 to Project SingleClick?

17 MS. ELMER: Same instruction.

18 Q. (By Mr. Nakamura) Will you follow Ms. Elmer's
19 instruction?

20 A. Yes.

21 Q. What data sources did Alphabet employees rely
22 upon for any financial analyses prepared for Project
23 SingleClick?

24 MS. ELMER: Same instruction. And also
25 object to the form as assuming facts not in evidence.

1 Q. (By Mr. Nakamura) Will you follow Ms. Elmer's
2 instruction not to answer?

3 A. Yes.

4 Q. What data sources did Alphabet employees rely
5 upon in preparing presentations for Project SingleClick?

6 MS. ELMER: Same instruction and object to
7 the form as assuming facts not in evidence.

8 Q. (By Mr. Nakamura) Will you follow Ms. Elmer's
9 instruction not to answer?

10 A. Yes.

11 Q. All righty.

12 MR. NAKAMURA: Let's go off the record
13 briefly.

14 THE VIDEOGRAPHER: Off the record at
15 2:05 p.m.

16 (Recess taken)

17 THE VIDEOGRAPHER: Back on the record at
18 2:11 p.m.

19 Q. (By Mr. Nakamura) All right. Thanks for
20 taking that break, [REDACTED].

21 I will now ask you about Project
22 Stonehenge, which is part of specifications 1c and
23 specification 2.

24 Who chose the name "Project Stonehenge"
25 for the project?